IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 123 of 2000
in

MISC.CIVIL APPLICATIONNo 208 of 2000

in and with

SPECIAL CIVIL APPLICATION NO.1939 OF 1988

Hon'ble THE CHIEF JUSTICE MR. D.S.SINHA

and

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMANBHAI B PATEL

Versus

STATE OF GUJARAT

Appearance:

MR SB VAKIL for Appellants.

MR PREMAL R JOSHI, AGP, for Respondents

CORAM : THE CHIEF JUSTICE MR. D.S.SINHA

and

MR.JUSTICE J.M.PANCHAL

Date of decision: /02/2003

C.A.V. JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. By filing instant appeal under Clause 15 of the Letters Patent, the five appellants claim that the order and judgement dated December 30, 1999 passed by the learned Single Judge in Special Civil Application NO.1939/88 remanding the matter to the Gujarat Revenue Tribunal for deciding two questions, namely, whether the word "person" as defined in Gujarat Agricultural Lands Ceiling Act, 1960 (the Ceiling Act for short) includes "association of persons", and whether in absence of an application under section 8 of the Ceiling Act, the appellants are entitled to different units, as well as the decision dated February 23, 2000 rendered by the learned Single Judge in Misc. Civil Application No.208/2000 rejecting the prayer made by the appellants to review the judgement delivered in Special Civil Application No.1939/88, being illegal should be set aside.

2. The relevant facts may be noticed in brief.

2.1 On September 15, 1969 an agreement was entered into between the appellants and their spouses for purchase and cultivation of agricultural lands. It was provided therein that the division/partition of the lands to be purchased should be effected as early as possible. The said agreement is produced at Annexure-D to the petition. The appellants were holding the following agricultural lands:

Village	Taluka	District	Measurement	
			Acre	Guntha
Madheli	Vaghodia	Vadodara	172	33
Vasad	Anand	Kheda	19	30
Chhota-nagar	Pavi-Jetpur	Vadodara	05	36
Kasod	Petlad	Kheda	01	12

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The lands situated at village Madheli were purchased in the names of 10 persons under different sale deeds dated (1) September 14, 1970 which is produced at Annexure-E to the petition, (2) April 29, 1971 which is produced at Annexure-F to the petition, (3) June 23, 1971 which is produced at Annexure-G to the petition and (4) December 18, 1971 which is produced at Annexure-H to the petition. The above referred to lands of village Madheli were partitioned between the joint owners vide deed dated December 30, 1971 which is produced at Annexure-I to the petition.

2.2 The Mamlatdar and ALT, Dabhoi, initiated proceedings under section 20 of the Ceiling Act. He held that (1) the lands situated at village Vasad were used for non-agricultural purpose before coming into force of the Ceiling Act and were therefore entitled to be excluded from computation, (2) the lands situated at village Madheli were purchased by five appellants jointly and not by ten persons as claimed by the appellants, (3) the agreement dated September 15, 1969 is genuine, (4) the total holdings of the appellants for the purpose of the Ceiling Act is 181 acres and 31 gunthas (5) the appellants are entitled to five units i.e. they are entitled to hold 180 acres of land and therefore land admeasuring 1 acre and 31 gunthas is liable to be declared as surplus under the Ceiling act. He, therefore, by his order dated April 30, 1983 held that the appellants were holding 1 acre and 31 gunthas of land as surplus land.

2.3 The Deputy Collector, Dabhoi, exercised powers of review conferred on him by section 37 of the Ceiling Act. He held that all the appellants were entitled to hold only one unit and not five units as held by the Mamlatdar and ALT, Dabhoi. He, therefore, by his order dated August 23, 1984, held that the appellants are holding lands admeasuring 145 acres and 31 gunthas as surplus land.

2.4 Feeling aggrieved, the appellants invoked revisional jurisdiction of the Gujarat Revenue Tribunal by filing Revision Application No.TEN B.A.1243 of 1984. The Tribunal dismissed the revision application by judgement dated December 24, 1987.

2.5 Thereupon the appellants preferred Special Civil Application No.1939 of 1988 before the High Court under Article 226 of the Constitution. The learned Single

Judge, by judgement dated December 30, 1999, has set aside the decision of the Tribunal and remanded the matter to the Tribunal for deciding the question whether the word "person" includes "association of persons" and in absence of an application under section 8 of the Ceiling Act, the appellants are entitled to different units.

2.6 The appellants were of the view that the remand was uncalled for and therefore submitted Misc. Civil Application No.208/2000 for review of the judgement delivered in Special Civil Application No.1939/1988. The learned Single Judge has rejected the same by order dated March 23. 2000, giving rise to the present appeal.

3. We have heard Shri S.B. Vakil, learned Senior Advocate appearing for the appellants and Mr. Premal Joshi, learned Assistant Government Pleader appearing for the respondents, at length and in detail, and considered the documents forming part of the petition.

4. The question whether the word "person" includes "association of persons" is decided by the decision rendered by the learned Single Judge in Balu Rama Bhurada & Others Vs. State of Gujarat and others 1994(1) GCD 623 (Guj.), wherein it is held that the expression "person" in section 6 of the Ceiling Act read with the word "person" defined in sub-section (35) of section 3 of the Bombay General Clauses Act, 1904, includes the persons of a village within the meaning of section 6 of the Ceiling Act. On remand, the Gujarat Revenue Tribunal will be confronted with the decision delivered by the learned Single Judge which is referred to above and will have no option but to follow the same having regard to law of precedent. The question whether the word "person" includes "association of persons" is a pure question of law and should have been decided by the Court with reference to the statutory provisions and decided cases, if any. Further, the question whether in absence of an application under section 8 of the Ceiling Act, the appellants would be entitled to different units is also a pure question of law and depends upon the answer to the question whether the word "person" includes "association of persons". In our view, the remand of the matter to decide two questions of law formulated by the learned Single Judge was not warranted in the facts of the case, and therefore, the decision rendered by the learned Single Judge in Special Civil Application No.1939/88 is liable to be set aside. As the judgement delivered in the main matter i.e. Special Civil Application No.1939/88 is liable to be set aside, the order dated

March 23, 2000 rendered in Misc. Civil Application No.208/2000, refusing to review judgement delivered in Special Civil Application No.1939/88, would not survive and will have to be set aside.

5. In normal course this Court would have remanded the Special Civil Application to the learned Single Judge for deciding the same on merits because the matter is not decided on merits by the learned Single Judge. However, we notice that even the learned single Judge would be bound by the decision rendered in Balu Rama Bhurada (supra), and if the same is followed, the matter would come up before the Division Bench by an appeal which may be filed by the aggrieved party, and in case the learned Single Judge differs with the view taken in Balu Rama Bhurada (Supra), a reference to the Division Bench may be necessitated. Thus, ultimately the Division Bench will have to deal with the matter on merits. Therefore, the learned counsel for the appellants has suggested that instead of remanding the matter to the learned single Judge for deciding the petition on merits, the matter may be heard on merits by this Court and legality of the decision rendered by the Gujarat Revenue Tribunal be adjudicated upon. This suggestion is accepted by the learned Assistant Government Pleader appearing for the respondents. Further, the matter is very old. Under the circumstances, instead of remanding the petition to the learned Single Judge, for being decided on merits, we propose to decide the Special Civil Application on merits wherein the decision of the Gujarat Revenue Tribunal is challenged.

6. The contention advanced on behalf of the appellants that section 2(21) of the Ceiling Act includes only joint family and would not include an association or body of individuals cannot be accepted. It is to be noticed that the phrase employed by the Legislature is "includes". The word "includes", when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import, but also those things, which the clause declares that they shall include. Thus, when the word "includes" is used, the definition is extensive and not restrictive.

7. In Hasmukhlal Vs. State of Gujarat AIR 1976 SC 2316 the Supreme Court was concerned with the question whether the Ceiling Act violates second proviso to Article 31A(1) of the Constitution of India. While upholding the validity of the Ceiling Act, the Supreme Court has noticed that the term "person" is not, strictly

speaking, defined in the Act and section 2, sub-section (21) only clarifies that the term "person" will include a "joint family" also. What is emphasized by the Supreme Court is that it certainly does not exclude an individual from being a person in the eyes of law. It is emphatically held by the Supreme Court therein that clarification of the term "person" has been done apparently to make it clear that in addition to individuals, as natural persons, families, as conceived of by other provisions, can also be and are persons. It is observed by the Supreme Court that there is no fixed concept of person anywhere and that the concept is wide so that it could be contended that it should not be narrowed down or confined. On analysis of section 6(2) of the Ceiling Act, the Supreme Court has held that the said section does not either disable a husband or wife from owning or holding their separate properties separately, nor does it merge or destroy their separate legal personalities, but it requires that their separate holdings to be grouped together as though they were held by one person only for the purpose of determining the ceiling limit for each member of a family. It is explained by the Supreme Court that it may indirectly have the effect of disabling a member of a family from holding land upto the prescribed ceiling limit for a person holding as an individual and the result is that such a member of a family will have to be content with a holding less than that of an unmarried individual. The Supreme Court has authoritatively ruled in the said decision that section 6(2) of the Act does not affect either the legal status or competence of persons who are grouped together for the purposes of the Act, and there is no prohibition enacted by the second proviso to Article 31-A against different ceiling limits prescribed for various individuals or classes of individuals differently situated.

8. Reliance placed on the decisions in (1) S.K. Gupta and another Vs. K.P. Jain and another, AIR 1979 SC 734, (2) Regional Director, ESIC Vs. High Land Coffee Works (1991) 3 SCC 617, (3) P. Kasilingam and others Vs. P.S.G. College of Technology, AIR 1995 SC 1395 and (4) Firoze N. Dotivala Vs. P.M. Wadhwani (2003) 1 SCC 433 to contend that when the word "include" is used by the Legislature, it shall include those things which are declared to be included and nothing else, and therefore an association or body of persons cannot be included in the definition of word "person" as given in the Ceiling Act, is of no avail. In the decisions which are relied upon by the learned counsel for the appellants it has been specifically held by the Supreme Court that the word

"include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute and when it is so used, these words or phrases must be construed as comprehending not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. The natural import of the word "person" has been interpreted by the Supreme Court in Hasmukhlal (supra), wherein it is held that individuals and natural persons as well as families are covered within the word "person" and in view of inclusive definition of word "person", it also includes joint family. Therefore the Gujarat Revenue Tribunal did not commit any error in treating the appellants, who are co-owners, as a "person" within the meaning of the Ceiling Act.

9. This question can be examined with reference to the provisions of Bombay General Clauses Act, 1904 also. Section 3 of the General Clauses Act, 1904 defines certain words and phrases. The opening words of the said section are very important. As per the opening words, the definition of words given in section 3 of the said Act would be applicable to the words used in the said Act and in all Bombay Acts or Gujarat Acts made after the commencement of the Act, unless there is anything repugnant in the subject or context, section 3, sub-section (35) of the General Clauses Act provides that "person" shall include any company or association or body of individuals, whether incorporated or not. It is not in dispute that the Ceiling Act has been enacted after the commencement of Bombay General Clauses Act, 1904, and after section 3 of the said Act was amended by Gujarat A.O. 1960. Thus, by force of opening words of section 3 itself, word "person" as defined in the Ceiling Act shall also include any company or association or body of individuals whether incorporated or not. A conjoint and meaningful reading of the provisions of the Ceiling Act with the provisions of the Bombay General Clauses Act, 1904, in no uncertain terms establishes that the word "person" would mean not only such things as it signifies according to its natural import, but also includes any company or association or body of individuals, whether incorporated or not as provided in section 3(35) of the Bombay General Clauses Act, 1904, and also a joint family as provided in section 2(21) of the Ceiling Act. In M.M. Ipoh Vs. I.T. Commissioner, Madras, AIR 1968 SC 317, the Supreme Court noticed that the expression "person" as defined in section 2(9) of the Indian Income Tax Act, 1922 included a Hindu undivided family and a local authority and has, while construing said expression,

ruled that, when the definition is inclusive, resort may appropriately be had to the general clauses Act to ascertain the meaning of the expression "person". In the said decision it is held that a firm is a "person" within the meaning of Income Tax Act. The plea based on the decision of the Supreme Court in Dulichand Vs. I.T. Commissioner, AIR 1956 SC 354 that resort to the Bombay General Clauses Act should not be made as the definition of the word "person" occurring in section 3(35) of the said Act is repugnant to the subject of Ceiling law, has no merits. In Dulichand (supra) the Supreme Court had occasion to consider the question whether a partnership purporting to be one between firms, a Hindu undivided family business and an individual as a firm required registration. It was noticed that the word "persons" in section 4 of the Partnership Act contemplated only natural or artificial i.e. legal persons and a firm is not a "person". Therefore, it has been held that to import the definition of the word "person" occurring in section 3(42) of the General Clauses Act, 1897 into section 4 of Partnership Act is not proper as it is totally repugnant to the subject of partnership law. In our view, reading of the definition of the word "person" occurring in section 3(35) of the Bombay General Clauses Act, 1904 into section 2(21) of Ceiling Act is not repugnant to the subject of Ceiling law, but is in consonance with the avowed object of the Ceiling Act. Further, definitions contained in the General Clauses Act are intended for proper interpretation of all Gujarat Acts made after the commencement of that Statute and the terms defined by that enactment will have the same meaning, in all subsequent enactments which employ that term, unless there be something inconsistent or repugnant to the context in the latter Act. Therefore, section 3(35) of the Bombay General Clauses Act, 1904, would be applicable to the Ceiling Act because it could not be successfully pointed out on behalf of the appellants that there is anything repugnant in the subject or context of the Ceiling Act. To constitute a person, the person must be recognised by the State as a person and should be capable of rights and liable to duties. These two elements i.e. capacity to possess rights and subjection to obligations and duties are matters of legislative results. Further, "Body of persons" would mean an aggregate of individuals or groups and when two or more individuals voluntarily combine together for a certain purpose, "an association of persons" is formed. Tested on this basic juristic approach, an association or body of persons known as co-owners will have to be regarded as a person within the meaning of section 2(21) of the Ceiling Act, because co-owners are recognised by law and

they have capacity to possess rights and are subject to obligations and duties. In Agarwal Trading Corporation Vs. Assistant Collector of Customs AIR 1972 SC 648, it is held by the Supreme Court that a firm is to be treated as a person within the meaning of section 8 of the Foreign Exchange Regulation Act and section 167(3)(8) and (37) of the Sea Customs Act by having recourse to section 3(42) of the General Clauses Act. Thus, in our view, the word "person" comprehends according to its natural import "individuals" as explained by the Supreme Court in Hasmukhlal (supra) and an association or body of persons as defined in section 3(35) of the Bombay General Clauses Act, 1904 and also a joint family. Under the circumstances, the view taken by the Gujarat Revenue Tribunal deserves to be affirmed.

10. There is yet another angle of the matter which deserves specific mention. Section 13 of the Bombay General Clauses Act, 1904 inter alia provides that words in singular shall include the plural and vice versa. In order to get its true import it is necessary to view the enactment in retrospect, the reasons for enacting, the evils it was sought to end, and the objects it was to subserve. Viewed in this perspective, we find that the principle that singular shall include the plural must be applied to the word "person" as defined in section 2(21) of the Ceiling Act. When a provision is drafted in singular that does not mean a different intention has been expressed for not including plural. In Jaganath Vs. Parshottamdas 8 GLR 9 it has been held by this Court that the word "councillor" in section 14 of the Gujarat Municipalities At, 1963 includes "councillors". Again in Nathu Vs. State AIR 1958 Allahabad 467 and in Motilal Vs. State AIR 1959 Patna 54 it has been held that Section 27 of the Evidence Act does not exclude the interpretation as to plurality of information received from persons accused of any offence. After making resort to the provisions of General Clauses Act, 1897 it has been held that the word "person" in singular includes plural. What is important is that in Wealth-tax Officer Vs. C.K. Mammed Kayi AIR 1981 SC 1269 the word "individual" under Wealth Tax Act, 1957 is held to include group of persons. Thus, applying the well settled principle of interpretation of statute, namely, singular shall include the plural, to the provisions of the Ceiling Act, we find that the word "person" as defined in section 2(21) would include "persons" who are not related to each other, but who form an association or body for a purpose. On the basis of this reasoning also the decision of the Gujarat Revenue Tribunal will have to be upheld.

11. For what has been stated above, we are of the opinion that the Tribunal did not commit any error in upholding the decision of the Deputy Collector by which the appellants, who are co-owners, have been held to be entitled to hold one unit. As we have held that the appellants who are co-owners are included in the definition of word "person", the partition of the lands situated in village Madheli by deed dated December 30, 1971 will have to be regarded as having been made in anticipation in order to defeat the object of the Ceiling Act as provided in section 8 of the said Act and of no consequence. The Special Civil Application is, therefore, liable to be dismissed.

12. For the foregoing reasons, the appeal partly succeeds. The judgement dated December 13, 1999, rendered in Special Civil Application No.1939/88 is quashed. So also the order dated March 23, 2000 passed in Misc. Civil Application No.208/2000 which was filed in Special Civil Application No.1939/88 is quashed. Special Civil Application No.1939/88 is dismissed and rule is discharged. The judgement dated December 24, 1987, rendered by the Gujarat Revenue Tribunal in Revision Application No.TEN.B.A.1243 of 1984 is confirmed. Appeal stands allowed only to the extent indicated hereinabove. There shall be no order as to costs all throughout.

[D.S. SINHA, C.J.]

[J.M. PANCHAL, J.]

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At this stage, Mr. S.B. Vakil, learned Senior Advocate appearing for the appellants, prays that interim relief granted earlier be continued for a period of two months in order to enable the appellants to approach higher Forum. Having regards to the facts of the case, interim relief granted earlier is directed to continue for a period of two months from today.

[D.S. SINHA J.]

[J.M. PANCHAL J.]